

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAMIEN BANKS, #504504,

Plaintiff,

Civ. Action No. 1:18-cv-00538-JTN-SJB

vs.

Hon. Janet T. Neff

GREG TORREY,

Defendant.

**DEFENDANT GREG TORREY'S MOTION FOR LEAVE TO FILE
DISPOSITIVE MOTIONS AND FOR AMENDMENT OF SCHEDULING ORDER**

Defendant GREG TORREY, by counsel, respectfully requests that this Court grant it leave to file dispositive motions in this action and to amend the current Case Management Order and related Scheduling Orders pursuant to Federal Rule of Civil Procedure 16(b)(4), and in support thereof states as follows:

1. On May 14, 2018, Plaintiff filed his Complaint alleging a variety of causes of action including a First Amendment Retaliation Claim. [Doc. #1]. Plaintiff filed a First Amended Complaint on December 7, 2018. [Doc. #19].
2. Following very limited preliminary discovery, the parties filed Cross-Motions for Summary Judgment in March of 2019. [Doc. ##33-44].
3. On September 16, 2019, Magistrate Carmody entered a Report and Recommendation denying Plaintiff's Motion for Summary Judgment and partially granting Defendant's Motion, leaving only Plaintiff's retaliation claim as at issue in the action. [Doc. #47].

4. The Report and Recommendation was adopted by Judge Neff on January 10, 2020. [Doc. #51]. The Court's ruling limited the claims allowed to proceed in the action, and clarified the focus of the case and the scope and alleged bases for Plaintiff's claims.

5. Pro-bono counsel was appointed on behalf of Plaintiff on January 27, 2020, shortly after the Court's Order, [Doc. #53]. The undersigned counsel also was retained in connection with this matter following the appointment of Plaintiff's counsel.

6. Since counsel entered their respective appearances on behalf of Plaintiff, discovery in earnest has taken place, including numerous party and non-party depositions not taken prior to the filing of the initial Motions focusing on Plaintiff's alleged claim for retaliation.

7. Upon agreement of the parties, due to logistical issues including locating and scheduling depositions of witnesses, the completion of discovery will be completed beyond the close of discovery set by this Court, with Plaintiff's deposition set for October 21, 2020 and a non-party deposition scheduled for October 23, 2020.

8. This Court previously issued its Case Management Order which stated that further dispositive motions would not be filed. [Doc. #58]. The Court subsequently extended the discovery deadline and settlement conference pursuant to the parties' stipulation. [Doc. #60]. This matter is currently set for a Settlement Conference on November 10, 2020. [Doc. #62].

9. However, given the additional discovery including the several depositions conducted by the parties relative to Plaintiff's retaliation claim, Defendant requests that it be allowed to file a dispositive motion relating to this single claim, and that the current Orders be modified to allow for same.

10. Defendant submits that the additional depositions, the timing issues relating to discovery, and the new testimony provided present good cause sufficient to modify the current Orders to allow for the filing of dispositive motions and to adjourn the settlement conference. Doing so will not prejudice Plaintiff, and Plaintiff also may submit dispositive motions as he deems appropriate based upon the new testimony adduced in this action.

11. Defendant therefore believes that following the completion of discovery the testimony and evidence will allow this Court to rule as a matter of law on the pending retaliation claim at issue and conclusively resolve this action.

12. Defendant respectfully requests that the Court grant it leave to file a motion for summary judgment on Plaintiff's claim for retaliation based upon the significant discovery that has taken place and the involvement of counsel, and similarly adjust the currently pending Case Management Order and Settlement Conference Orders to allow for such motions to be filed and ruled upon prior to any settlement conference.

13. Further, Defendant respectfully requests that this Court adjust the currently pending Case Management Order and Settlement Conference Orders to allow the motions to be filed and ruled upon prior to any settlement conference, and that the settlement conference currently scheduled be adjourned.

14. Defendant believes that allowing it to file such a motion also will promote judicial economy and efficiency by streamlining any issues that may remain for trial including potentially avoiding an unnecessary trial in this matter.

15. At the time of this filing, Plaintiff has not provided concurrence in the relief sought through this Motion.

WHEREFORE Defendant Torrey respectfully requests that this Court grant him leave to file a dispositive motion no later than thirty (30) days after Plaintiff's deposition is concluded, currently scheduled for October 21, 2020; that this Court modify its previous scheduling orders to allow the filing and ruling on dispositive motions prior to any settlement conference; and for such other and further relief as this Court deems appropriate.

Dated: October 19, 2020

Respectfully submitted,

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